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Te Deum for Legislative Blessings

R. Hickman Walker

TE DEUM FOR LEGISLATIVE BLESSINGS

By R. Hickman Walker

NO citizen, well disposed toward the Commonwealth, can glance through the pages of Holland's Legislative Service without an involuntary thanksgiving for the 27th General Assembly.

When that assembly convened, there existed in the state—unmarked by many heedless citizens—69 emergencies, and the public peace, health, and safety were immediately threatened at 76 distinct points. Where, I ask you, was our press, where our pulpit—recently not reticent in the face of public danger—to let us walk about in that fancied security? Where was this Association, where its head, that it and he were silent while crisis trod upon the heel of crisis, and disorder, famine, and pestilence stalked abroad in the land?

But all is well now. The clouds that lowered about our house are in the deep bosom of the ocean buried. The county court of Moffat County, just in the nick of time, had three of its terms amputated, and no further rioting in that quarter is anticipated. The doors of school cafeterias have opened, while school-children, though gnawed with hunger, could yet stagger in. El Paso County, none too soon, is snatched into Class One, Division A, for county commissioners' fees, and the National Guard may be withdrawn from that county. Provision is made for the instant vaccination of diseased bees. Banks, near bursting from overstuffed vaults, are ministered to by cutting their reserve requirements five per cent.

That old, and divinely ordained relationship—that dear, close tie—that binds the certified public accountant to his client, is placed, where it belongs, on a level with the marriage bond, and beyond profanation by district attorneys, whose salaries are raised in atonement for loss of access to that sweet confidence. Gum machines and telephone coin boxes are brought within the King's peace. The walls of the Smith Hollow Game Refuge rise like magic against the bullets that were lawful when they left the barrel. The office of Irrigation Division Engineer in Irrigation District No. 1—that vile cancer that has been eating at the very heart of our body politic—is abolished. State Hail Insurance bests the

summer storms. And the march of the Mormon cricket is halted on the very banks of the Fraser River.

Not only, however, for these immediate reliefs—but for constructive statutes, coming more slowly into operation and with space allowed for adjustment to their revolutionary requirements—are we thankful.

Gradually, not as by a wrench, are we to become accustomed to paying $5.00 to the clerk for a divorce decree with alimony provision. We are granted 90 days to prepare for that. And how wise were those skilled artificers of procedural law, Senators Quiatt, Knauss, and Fairfield, that they did not thrust upon our surprised and unready souls the far-reaching innovations of their Senate Bill No. 215. We have yet four days left to accommodate our practice to it. It deals with summons and the publication thereof, and if you will study it closely, if you will compare it repeatedly with the text of the present law—there will come upon you, about the time of the sixth perusal, a staggering sense of the fundamental changes which it has wrought. Contrast the workmanship of this statute with the clumsiness of the lay-drawn House Bill No. 580—the latter designed to revive the mining industry of the State. Whereas House Bill No. 580 contains, excepting a general repealing clause, only one section of one short sentence, Senate Bill No. 215 contains 3 sections, with several subdivisions, with sentences longer than those authorized by the new Baumes law.

But there can be no doubt that Senator Quiatt and his associates have accomplished their purpose. You may now get your order of publication from a judge, or a court, under act of the legislature, whereas before you could get it from a court or a judge, under Rule 14A of the Supreme Court. You don't have to depend upon the Supreme Court rule any more. There is restored to you the privilege of saying, if you don't want to be nasty, that the defendant conceals himself to avoid service—instead of letting him off by averring ignorance of his whereabouts. But more than that, the phrase which Robinson and Company has illicitly inserted in the summons, "or if by personal service outside the state, then within 50 days", need no longer be bootlegged. More important than all, whereas the old form of summons allowed you but a

quarter of an inch for the name of the plaintiff, now you can bring a suit for a Russian, or for Henry Toll's law firm, without having to telescope your letters.

Now that you have looked upon that picture, look upon this—House Bill No. 580. I have time to quote it:

"Section 1. That no action shall be brought or maintained for the recovery of mining or placer property unless such action be brought within a period of two years from the commencement of the defendant's actual possession; provided, however, that the defendant to such action was in actual possession of the property, and had performed work and labor thereon for six months of each year throughout such actual possession, and provided, further, that such possession was based upon tax deed purchased from the treasurer wherein such properties were located, and provided, further, that if such tax deed was issued and purchased in good faith, no technical error in the issuance of such tax deed shall destroy the validity thereof or shall defeat the purposes and spirit of this act."

No lawyer's prolixity there—just the plain, blunt language of the old prospector. But what worlds of meaning! You want to develop mining and so you go up into the District and run some old fogey, who has been retarding the industry, off his claim with force and arms. He sues you the next day. This statute is your shield. Just plead that the action was not commenced within two years from the commencement of the act of possession under a tax deed—make it stronger by saying that there never was a tax deed on the property. You must prevail.

The 27th General Assembly manifested a sensibility to the progress of the learned professions. Under its wise enactment, the requirements for admission to the profession of barbering have been raised, until they are now not very much higher than those required for lawyers. Good moral character must he now have who brandishes his razor before your throat, or to whom you trust, as to a fiduciary, the interest of your few remaining hairs. The beautiful relationship of barber and customer will soon have its testimonial privilege, too, and no secret divulged while in the chair, gag in mouth, will be available against you. Not only good moral character, for

the barber, too, must be able to read intelligently and write clearly the English language. No additional conversational abilities with the language are prescribed. Pharmacists and abstracters, also, now know that good moral characters are very favorably regarded by our legislators—in their collective capacity.

But the feature of the last legislative season, which, more than any other, challenges the interest and admiration of the student of constitutional or public law, is the struggle which it developed between the legislative and the judicial branch, upon a question of profound public policy. That question deeply affects our social fabric. It relates to the institution of marriage. Both the General Assembly and the Supreme Court were in favor of marriage. But the General Assembly was in favor of more marriages than the Supreme Court. Accordingly, in 1927 it authorized the guilty spouse to terminate the relation and prepare himself for a new one. The court, however, was not to be frustrated, and in the Walton case it still saw the uncleanliness upon the hands which the Legislature had washed. It questioned the power of the Legislature to control its sight. But that body stoutly stood and fought back with Senate Bill No. 99, and the issue might now be in doubt, if under the rules the legislature were not required to return home, and leave the arena to the court alone for two years more. This is not the time nor the place to express any views as to the merits of the controversy. The antagonists have treated each other with courtesy, the court having assured the assembly that it did not question its right to enact a Code of Civil Procedure, and the assembly by its closing provision in Senate Bill No. 215 having recognized the right of the Supreme Court to make rules; and so—the only question is, whose rule prevails?

But I cannot abstain from expressing some sympathy with the legislative declaration in Section 2 of Senate Bill No. 99: "It is against public policy to have the marriage undecided." The last end of the marriage relationship is entitled to the same clarification as the first end of it. It is no less cruel to keep a man in doubt whether he is a divorcee, than whether he is a bridegroom.